

REMARKS

Claims 1, 2, 4 and 5 remain in the case.

Reconsideration of this Application is requested.

No new matter has been entered.

REJECTIONS UNDER 35 U.S.C. § 103, FIRST PARAGRAPH

The Examiner has rejected claims 1, 2, 4 and 5 as being unpatentable over U.S. Patent No. 6,938,538 to **Mainville** in view of U.S. Patent No. 3,653,302 to **Nottenboom** and U.S. Patent No. 6,337,459 to **Terwijn**, under 35 U.S.C. § 103, first paragraph.

The Applicant respectfully traverses the rejection as follows.

Mainville, U.S. Patent No. 6,938,538 ("the '538 Patent), should be withdrawn as not truly prior art under 35 U.S.C. Section 103, first paragraph. The '538 Patent issued on September 6, 2005, and was not earlier published, while the present application was filed on January 6, 2004. As shown in the attached declaration filed under 37 C.F.R Section 1.132, the sole inventor of the '538 Patent is also the sole inventor in the present application, and both are assigned to the same assignee.

Accordingly, since the claims are not amended herewith, if the Examiner now proceeds to reject the claims on other grounds, the rejection should not be a final rejection. See MPEP Section 706.07(a).

The differences between **Nottenboom** and claims 1, 2, 4 and 5 have been set forth in Applicant's letter dated December 8, 2008.

In view of the above and foregoing, it is respectfully requested that the Examiner withdraw her rejection of claims 1, 2, 4 and 5 under 35 U.S.C. § 103, first paragraph.

The rejections of the claims are believed to have been overcome by the present amendments and remarks. From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such an action is earnestly solicited. The Examiner is invited to telephone the undersigned if she believes that the prosecution of this application would be furthered thereby.

Respectfully submitted,

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